THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P. No. 8239 of 1996

Between:

Kella Appalanaidu and another.

..Petitioners.

and

Government of Andhra Pradesh, rep. by its Secretary, Revenue Departments, Secretariat Buildings, A.P., Hyderabad and others.

..Respondents.

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P. No. 8239 of 1996

ORDER

Petitioners purchased 200 and 150 sq. yards in R.S.No.78/1B of Paikapuram village in Vijayawada Municipal Corporation area under two registered sale deeds dated 23-08-1995 from N. Rajeswari (fifth respondent), the owner of the said property, after obtaining clearance from the Urban Land Ceiling Authority, vide proceedings F.Dis.B5.1034/95 dated 11-08-1995. After obtaining approval from the Municipal Corporation they started construction of houses in their respective plots, whereupon the Special Revenue Inspector, Vijayawada, (third respondent) gave a notice that they should attend his office on 28-02-1996 with all relevant documents and stop further constructions till required permission is given by him. It is the case of the petitioners that they attended his office and have shown the documents of title and permission, and yet respondents are interfering with their construction. They filed this petition seeking a declaration that the action of the respondents 2 to 4 in interfering and preventing them from proceeding with the constructions in their plots in S.No.78/1B is illegal.

2. On behalf of respondents 1 to 4, the Mandal Revenue Officer, Vijayawada Urban (fourth respondent) filed his counter-affidavit, *inter alia,* alleging that one M. Panduranga Vital filed a declaration under the provisions of the Urban Land Ceiling Act (the 'Act') disclosing the extent of land owned by him in different places and the competent authority, after considering his declaration, directed him to surrender an extent of 1033 sq. meters in R.S.No.78/1 of Paikapuram village and as he failed to handover the said extent of land, the Special Deputy Tahsildar, Urban Land Ceiling, Vijayawada, took possession of 1033 sq. meters of land in R.S.No.78/1 and demarcated it as R.S.No.78/1A in the presence of mediators leaving the balance land in S.No.78/1 to the declarant. The Government through G.O.Ms.No.337 Revenue UCI/Department dated 16-04-1990 allotted the surplus land in R.S.No.78/1A taken possession of by the Special Deputy Tahsildar to the Co-operative Department for construction of office building for Co-operative Training Centre. After coming to know that petitioners are trying to construct houses unauthorisedly, without permission in R.S.No.78/1A, a notice was issued to them to stop construction and appear before the Mandal Revenue Officer on 28-02-1996. In response thereto N.V.S.Prakasa Rao attended the office and informed that he purchased an extent of 1219 sq. yards in R.S.No.78/1B and gifted it to his wife Smt N. Rajeswari under a gift deed dated 08-04-1987, but did not produce any documentary evidence. When the extent of R.S.No.78/1B is only 505 sq. metres, he did not explain how he could purchase 1219 sq. yards in R.S.No.78/1B, so, he must have purchased a portion of land in R.S.No.78/1A, which was alienated by the Government to the Cooperative Department. Since the total extent

of land available in R.S.No.78/1B is only 505 sq. meters and since N.V.S.Prakasarao and Smt N. Rajeswari seem to have purchased 1219 sq. yards in R.S.No.78/1B , the excess portion purchased by them must be in R.S.No.78/1A, which was delivered of possession to the Cooperative Department. Since petitioners started construction of houses in R.S.No.78/1A, they were asked to stop the said construction and so, petitioners are not entitled to any relief.

3. The contention of the learned counsel for the petitioners is that since the petitioners purchased the land under registered sale deeds after obtaining clearance from the competent authority under the Act only, and are constructing houses in the lands purchased by them, but not in any other land, if the respondents were to feel that alienation in favour of petitioners is in violation of the provisions of the Act, the remedy is to recover equal extent of land from third respondent, who is the original declarant or vendor , but petitioners cannot be prevented from making constructions in the land purchased by them and relied on ***M. PRABHAKARA RAO v. THE SUB-REGISTRAR, KHAIROTABAD, HYDERABAD***[1]***; J. PICHAIAH v. SPECIAL OFFICER & COMPETENT AUTHORITY, URBAN LAND CEILING,HYDERABAD***[2] and ***KARANAM VENKATESWARLU v. PRINCIPAL SECRETARY, MUNICIPAL ADMNISTRATION & URBAN DEVELOPMENT,HYDERBAD***[3] in support of the said contention.

4. The contention of the learned Assistant Government Pleader is that since the petitioners are in fact making

constructions in R.S.No.78/1A under the guise of the sale deeds in their favour, Revene officials asked them to produce the documents and since the petitioners have no right to make any constructions in R.S.No.78/1A, which was made over to the Cooperative Department, they are not entitled to any relief.

5. The fact that the petitioners purchased 200 and 150 sq. yards under registered sale deeds, after obtaining clearance from the competent authority under the Act is not denied or disputed by the respondents. In para 18 at page 486 of ***KARANAM VENKATESWARLU*** case (3 supra) it is held that if the transfer in favour of the transferee is supported by the permission of the competent authority under the Act, the sale would be a valid sale under the Act. Since petitioners purchased property only after obtaining clearance from the competent authority under the Act the sales in their favour are valid. Therefore, petitioners have every right to make constructions in the land purchased by them. As held in ***M. PRABHAKARA RAO*** case (1 supra) and ***J. PICHAIAH*** case (2 supra) if the declarant had played any fraud and failed to disclose some extent of land, the remedy of the authorities under the Act is to proceed against the declarant, but they cannot interfere with the land in possession of the petitioners which they purchased in pursuance of the permission given to them.

6. From the pleadings in this case, it is seen that the question does not relate to the validity of the sale in favour of the petitioners, but it relates to the place of construction of the buildings by the petitioners because it is the contention of respondents that the petitioners, under the guise of sale deeds in

their favour, are making constructions in R.S.No.78/1A. Since the petitioners have purchased the land in R.S.No.78/1B of Paikapuram Village only and since they are not claiming any right in R.S.No.78/1A, as long as they are making constructions in R.S.No.78/1B, respondents cannot interfere with their possession of that land and the constructions being made by them therein, if the constructions are in accordance with the approved plan and the provisions of the municipal laws. Since the petitioners are not entitled to any right in R.S.No.78/1A and if they are making any constructions in R.S.No.78/1A, respondents can stop the constructions in R.S.No.78/1A.

With the above observation, the Writ Petition is disposed of. No costs.

C.Y.SOMAYAJULU, J

Dated: 04-07-2006

SJ

[1] 1988(1) ALT 685

[2] (A.P) 1990(2) L.S. 167

[3] 1997 (4) ALD 476 (DB)